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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Mandatory detention and denial of the right to seek asylum in Australia

1. The Government of Australia has systematically breached its humanitarian obligations towards asylum seekers through a regime of mandatory detention and new legislation explicitly designed to deny the right to seek asylum and limit the rights of refugees.

2. The right to seek and enjoy asylum is guaranteed by a range of international instruments to which Australia is a party, including the Universal Declaration of Human Rights (article 14), the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, the Convention Relating to the Status of Refugees (articles 26 and 31), the International Covenant on Civil and Political Rights (articles 9 and 16) and the International Convention on the Elimination of All Forms of Racial Discrimination (article 5). Australia's twin policies of mandatory detention and denial of the right to seek asylum effectively breach all of the obligations assigned by the above instruments.

3. Australia introduced its policy of mandatory detention of asylum seekers in 1992, under which, "All unlawful non-citizens in Australia must be detained and, unless they are granted permission to remain in the country (through the grant of a visa), they must be removed as soon as practicable" (Parliamentary Current Issues Brief, 8 2000–01). With the increased number of arrivals since 1999, the policy has resulted in a detention centre crisis. Currently there are six immigration detention centres in Australia, managed by a private company on contract from the Department of Immigration. By all independent accounts the conditions in these centres are far worse than conditions in Australian jails.

4. On 11 May 2001 the detention centre crisis received international attention after an incident at the Port Hedland centre resulted in 21 detainees being arrested and charged with criminal offences. The authorities soon released edited videotape footage to back up their allegations of a riot. Over a hundred asylum seekers then went on a hunger strike and on May 29 a statement signed by 150 detainees was smuggled out of the centre, asserting that the video footage was one-sided, and that the authorities had concealed taped evidence of their maltreatment.

5. An Australian Joint Parliamentary Team subsequently visited all detention centres and concluded that the conditions were 'appalling and unacceptable'. The Team observed massive over-population of facilities, inadequate amenities and services, and resultant mental illnesses. The Team heard stories of detainees' self-mutilation, prescription drug overdoses, attempted suicides and constant subjection to physical and psychological abuse by centre staff. The Team proposed that mandatory detention be restricted to fourteen weeks, in keeping with recommendations by the Working Group on Arbitrary Detention on limiting detention periods [E/CN.4/1998/44, paragraph 33(b); E/CN.4/2000/4, annex II, deliberation no. 5]. Notwithstanding, both the Australian Prime Minister and Minister for Immigration refused to even consider the Team's findings.

6. The Ministers' outright rejection of this balanced and thorough report by their peers characterises their utter contempt for the human rights of asylum seekers and their concomitant willingness to subject new arrivals to brutal and indecent conditions. The Australian Government has tolerated no opposition to its inhumane policies and has readily intimidated anyone prepared to question its assumed mandate: on June 8, for instance, a Western Australian magistrate questioned why two teenage boys brought before him on charges arising from the Port Hedland incident should have been in detention at all, as it appeared to him a violation of Australia's obligations under the Convention on the Rights of the Child; he was immediately censured by the Attorney General and warned that it was not within his mandate to comment on international law. Unsurprisingly, the

Government has been equally unwilling to see through a 1999 agreement in principle that the Working Group on Arbitrary Detention might visit the centres. A planned May 2000 mission was postponed indefinitely after the Government informed the Group that the date 'was not convenient' [E/CN.4/2001/14, paragraph 60(c)].

7. The detention centre crisis has been characterised by deaths in custody, violence, mass escapes and hunger strikes. Heavily armed officers have regularly been stationed in the centres, and the Minister for Immigration has threatened the Australian public that anyone found aiding an escapee would be liable to criminal charges and a possible ten year sentence. This is a blighted and shameful litany of abuse and misconduct.

8. In late August 2001 attention turned from conditions in the detention centres themselves to new arrivals, when over 700 new asylum seekers—most from Afghanistan and Iraq—arrived at the Australian Indian Ocean territory of Christmas Island by boat from Indonesia. After the Norwegian merchant vessel Tampa rescued a further 438 asylum seekers from a boat in distress, the Government of Australia refused to permit disembarkation at Christmas Island and sent heavily armed troops to commandeer the ship. Facing justifiable criticism from the High Commissioner, global human rights organisations, churches and other governments, the Government brokered a deal for the temporary disembarkation of the asylum seekers at Nauru: the first step in what has since become know as the 'Pacific Solution', whereby all new intended arrivals to Australia are diverted to Pacific island states.

9. Recent arrivals have also been taken ashore at Christmas Island, however under new laws they are no longer entitled access to the Australian mainland by default of having reached that territory. The modified Border Protection Bill—a watered-down version of an earlier piece of draconian legislation the Government attempted to pass in late August 2001—was adopted on September 18 along with six other items. These bills are designed, in short, to keep out asylum seekers. Under them Christmas Island and nearby Ashmore Reef have been excised from Australia's migration zone. The legislative changes also allow 'reasonable force' to be used by Australian officers in removing boats from Australian waters, and deny any person—asylum seeker, Australian citizen or otherwise—the right to legal recourse. Other provisions have stripped the rights of asylum seekers who do reach Australia to have their cases heard and reviewed through independent judicial process, have narrowed the definition of 'persecution' under domestic law—such that it is now tighter than the standards set by the Convention Regarding the Status of Refugees—and have further limited the rights to permanent residency and equal status with other Australians of those people who are found to be refugees.

10. The Government of Australia is violating the right of asylum seekers to be treated fairly, equally and with dignity. By focussing public attention on the means by which asylum seekers are reaching Australia it has diverted attention from the plight of the asylum seekers themselves and denied their common humanity. By unashamedly demonising asylum seekers as potential terrorist cadres and security threats it has baselessly fostered a domestic climate of fear and xenophobia and further victimised innocent people. Government arguments about queues being jumped and ministerial terminological hairsplitting are also spurious and irrelevant. Australia is in breach of its humanitarian and international legal obligations.

11. The Asian Legal Resource Centre calls on the Commission to strongly urge the Government of Australia to alter its policies of mandatory detention and denial of the right to seek and enjoy asylum. The Asian Legal Resource Centre also demands that the Working Group on Arbitrary Detention be given immediate access to immigration detention centres in keeping with the agreement it reached in principle with the

Government of Australia in 1999. Additionally, the Commission must be alert to plans expressed by the Australian Minister for Foreign Affairs to manipulate the Commission's mandate through appointments of Australian citizens to positions of influence within its structure. Finally, given the growing global concern over movements of asylum seekers, the Asian Legal Resource Centre urges the appointment of a Special Rapporteur on the right to seek asylum to examine and pursue breaches of this right by governments around the world.